

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

THE PEOPLE OF THE STATE OF NEW YORK	:	
by ELIOT SPITZER, Attorney General of	:	
the State of New York,	:	Index No. 404620/06
	:	Part 39
Plaintiff,	:	
	:	Justice Helen E. Freedman
-against-	:	
	:	AFFIDAVIT OF DAVID AXINN
	:	IN OPPOSITION TO COVENTRY
COVENTRY FIRST LLC, MONTGOMERY	:	FIRST AND REID S. BUERGER
CAPITAL, INC., THE COVENTRY GROUP, INC., and	:	<u>MOTION TO DISMISS</u>
REID S. BUERGER,	:	
	:	
Defendants.	:	

-----X

State of New York)
) ss.:
County of New York)

DAVID AXINN, being duly sworn, deposes and says:

1. I am an assistant attorney general in the office of Andrew M. Cuomo, the Attorney General of the State New York, and attorney for the People of the State of New York ("State"), plaintiff in this action. I submit this affidavit in opposition to the Joint Motion of Coventry First and Reid S. Buerger to Dismiss the Complaint, and to put before the Court true and accurate copies of additional documents to be considered in connection with the Complaint on the present motion to dismiss. See International Oil Field Supply Svcs. Corp. v. Fadeyi, No. 5991/04, 2006 NY Slip Op 9173, at *3 (2d Dep't Dec. 5, 2006) ("[o]n a CPLR 3211(a)(7) motion to dismiss, the facts alleged in the complaint must be accepted as true, and the court may

freely consider additional facts contained in affidavits submitted by the plaintiff to remedy any defects in the complaint”)(citing Leon v. Martinez, 84 N.Y.2d 83, 87-88 (1994)); Rovello v. Orofino Realty Co., 40 N.Y.2d 633, 635 (1976).

2. Attached hereto as Exhibit A is a copy of the Complaint filed in this action.

3. In the course of the investigation leading up to the filing of the complaint in this action, Coventry provided the State with an Excel spreadsheet containing information on the life settlement transactions that Coventry has completed between 2001 and March 31, 2006. The spreadsheet contains data on 3,469 separate life settlement transactions. Attached hereto as Exhibit B is an excerpt of the Coventry spreadsheet sorted to indicate that of these 3,469 transactions, 298 of the life insurance policies were owned by New York sellers.

4. Attached hereto as Exhibit C is an excerpt of the Coventry spreadsheet sorted to indicate that an additional 60 policies purchased by Coventry were not owned by a New Yorker but insured the life of a New Yorker.


5. Attached hereto as Exhibit D are 10 emails produced from the files of Coventry First and AllSettled containing encoded emails concerning the payment of co-broker fees. Upon information and belief, these encoded emails evidence co-broker transactions requiring AllSettled to refrain from competitive bidding on the policy and to permit Coventry to obtain the bid in return for the co-broker fee.

6. Attached hereto as Exhibit E is the Joint SEC/NASD Staff Report on Examination Findings Regarding Broker-Dealer Sales of Variable Insurance Products, dated June 9, 2004.

7. Attached hereto as Exhibit F is a NASD Notice to Members, dated August 2006.

Dated: New York, New York
March 14, 2007

ANDREW M. CUOMO
Attorney General of the
State of New York

By: 
DAVID AXINN
Assistant Attorney General
120 Broadway
New York, New York 10271
(212) 416-6277

Sworn to before me
this 14th day of March, 2007

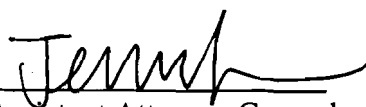

Assistant Attorney General
Pursuant to Executive Law Section 73

EXHIBIT B

Policy ID	Carrier's Offer to Buyer		Case ID	Insured State	Owner State of Residence	NY Broker Employed	Date Funded to Chart	Broker 1		Broker 2		Broker 3		Broker 4		Broker 5		Total Paid	Difference
	Surrender Value	Payment to Seller						Amount Paid	Broker 1	Amount Paid	Broker 2	Amount Paid	Broker 3	Amount Paid	Broker 4	Amount Paid	Broker 5		
1000.000	4500.000	4500.000	1000.000	NY	NY	FALSE	10/1/2017	0.00	NY	0.00	NY	0.00	NY	0.00	NY	0.00	0.00	0.00	0.00
2000.000	9000.000	9000.000	2000.000	NY	NY	FALSE	10/1/2017	0.00	NY	0.00	NY	0.00	NY	0.00	NY	0.00	0.00	0.00	0.00
3000.000	13500.000	13500.000	3000.000	NY	NY	FALSE	10/1/2017	0.00	NY	0.00	NY	0.00	NY	0.00	NY	0.00	0.00	0.00	0.00
4000.000	18000.000	18000.000	4000.000	NY	NY	FALSE	10/1/2017	0.00	NY	0.00	NY	0.00	NY	0.00	NY	0.00	0.00	0.00	0.00
5000.000	22500.000	22500.000	5000.000	NY	NY	FALSE	10/1/2017	0.00	NY	0.00	NY	0.00	NY	0.00	NY	0.00	0.00	0.00	0.00
6000.000	27000.000	27000.000	6000.000	NY	NY	FALSE	10/1/2017	0.00	NY	0.00	NY	0.00	NY	0.00	NY	0.00	0.00	0.00	0.00
7000.000	31500.000	31500.000	7000.000	NY	NY	FALSE	10/1/2017	0.00	NY	0.00	NY	0.00	NY	0.00	NY	0.00	0.00	0.00	0.00
8000.000	36000.000	36000.000	8000.000	NY	NY	FALSE	10/1/2017	0.00	NY	0.00	NY	0.00	NY	0.00	NY	0.00	0.00	0.00	0.00
9000.000	40500.000	40500.000	9000.000	NY	NY	FALSE	10/1/2017	0.00	NY	0.00	NY	0.00	NY	0.00	NY	0.00	0.00	0.00	0.00
10000.000	45000.000	45000.000	10000.000	NY	NY	FALSE	10/1/2017	0.00	NY	0.00	NY	0.00	NY	0.00	NY	0.00	0.00	0.00	0.00
11000.000	49500.000	49500.000	11000.000	NY	NY	FALSE	10/1/2017	0.00	NY	0.00	NY	0.00	NY	0.00	NY	0.00	0.00	0.00	0.00
12000.000	54000.000	54000.000	12000.000	NY	NY	FALSE	10/1/2017	0.00	NY	0.00	NY	0.00	NY	0.00	NY	0.00	0.00	0.00	0.00
13000.000	58500.000	58500.000	13000.000	NY	NY	FALSE	10/1/2017	0.00	NY	0.00	NY	0.00	NY	0.00	NY	0.00	0.00	0.00	0.00
14000.000	63000.000	63000.000	14000.000	NY	NY	FALSE	10/1/2017	0.00	NY	0.00	NY	0.00	NY	0.00	NY	0.00	0.00	0.00	0.00
15000.000	67500.000	67500.000	15000.000	NY	NY	FALSE	10/1/2017	0.00	NY	0.00	NY	0.00	NY	0.00	NY	0.00	0.00	0.00	0.00
16000.000	72000.000	72000.000	16000.000	NY	NY	FALSE	10/1/2017	0.00	NY	0.00	NY	0.00	NY	0.00	NY	0.00	0.00	0.00	0.00
17000.000	76500.000	76500.000	17000.000	NY	NY	FALSE	10/1/2017	0.00	NY	0.00	NY	0.00	NY	0.00	NY	0.00	0.00	0.00	0.00
18000.000	81000.000	81000.000	18000.000	NY	NY	FALSE	10/1/2017	0.00	NY	0.00	NY	0.00	NY	0.00	NY	0.00	0.00	0.00	0.00
19000.000	85500.000	85500.000	19000.000	NY	NY	FALSE	10/1/2017	0.00	NY	0.00	NY	0.00	NY	0.00	NY	0.00	0.00	0.00	0.00
20000.000	90000.000	90000.000	20000.000	NY	NY	FALSE													

Policy ID	Death Benefit	Carrier's Offer to Seller	Overhead/Whol. Payment to Seller	Payment to Broker	Coverage Gross Revenue	Cash ID Insured Name	Insured Basis of Residency	Owner Basis of Residency	NY Broker Inherited	Claim Forfeited to Client	Amount Paid	Broker 2	Amount Paid	Broker 3	Amount Paid	Broker 4	Amount Paid	Broker 5	Amount Paid	Total Paid	Differing
2000,000	722,218						NY	NY	FALSE												
1,000,000	1,000,000						NY	NY	FALSE												
1,000,000	1,000,000						NY	NY	FALSE												
2,000,000	2,000,000						NY	NY	TRUE												
2,000,000	2,000,000						NY	NY	TRUE												
5,000,000	5,000,000						NY	NY	FALSE												
5,000,000	5,000,000						NY	NY	FALSE												
1,000,000	3,119,899						NY	NY	FALSE												
10,000,000	10,000,000						NY	NY	TRUE												
1,500,000	1,500,000						FL	FL	FALSE												
5,000,000	5,000,000						NY	NY	TRUE												
500,000	500,000						NY	NY	FALSE												
500,000	500,000						NY	NY	FALSE												
1,000,000	1,000,000						FL	FL	FALSE												
1,000,000	1,000,000						NY	NY	TRUE												
750,000	750,000						NY	NY	FALSE												
8,750,000	8,750,000						NE	NE	FALSE												
500,000	500,000						NY	NY	FALSE												
125,000	125,000						NY	NY	FALSE												
319,978	319,978						FL	FL	FALSE												
425,722	425,722						FL	FL	FALSE												
430,728	430,728						FL	FL	FALSE												
6,000,000	6,000,000						NY	NY	FALSE												
3,000,000	3,000,000						NY	NY	FALSE												
6,000,000	6,000,000						NY	NY	FALSE												
2,000,000	2,000,000						NY	NY	TRUE												
1,250,000	1,250,000						NY	NY	FALSE												
1,000,000	1,000,000						NY	NY	FALSE												
500,000	500,000						NY	NY	FALSE												
500,000	500,000						NY	NY	FALSE												
1,000,000	1,000,000						NY	NY	TRUE												
1,000,000	1,000,000						NY	NY	FALSE												
1,000,000	1,000,000						NY	NY	TRUE												
375,000	375,000						NY	NY	FALSE												
154,000	154,000						NY	NY	TRUE												
457,603	457,603						NY	NY	FALSE												
387,896	387,896						NY	NY	FALSE												
1,000,000	1,000,000						NY	NY	FALSE												
1,000,000	1,000,000						NY	NY	FALSE												
855,000	855,000						NY	NY	FALSE												
500,000	500,000						NY	NY	FALSE												
500,000	500,000						NY	NY	FALSE												
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500,000	500,000						NY	NY	FALSE												
500,000	500,000						NY	NY	FALSE												
500,000	500,000						NY	NY	FALSE												

[illegible]

EXHIBIT C

Life Settlement Transactions by Policy - Draft Working Copy

Life Settlement Transactions
Policies Purchased Through 03/31/2008

[illegible]

EXHIBIT D

From: Neal Jacobs
Sent: Tuesday, November 02, 2004 9:11:11 AM
To: [REDACTED]@allsettled.com; [REDACTED]
Subject: RE: [REDACTED]

for [REDACTED], the number is 49

Neal Jacobs
Director, Financial Underwriting
Coventry First
7111 Valley Green Road
Fort Washington, PA 19034
TEL [REDACTED]
FAX [REDACTED]
[REDACTED]@coventryfirst.com
www.coventryfirst.com

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[REDACTED]

From: Neal Jacobs
Sent: Thursday, December 16, 2004 11:25:52 AM
To: [REDACTED]@allsettled.com; [REDACTED]
Subject: [REDACTED]

number is 200

Neal Jacobs
Director, Financial Underwriting
Coventry First
7111 Valley Green Road
Fort Washington, PA 19034
TEL [REDACTED]
FAX [REDACTED]
[REDACTED]@coventryfirst.com
www.coventryfirst.com

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[REDACTED]

From: Neal Jacobs
Sent: Friday, January 21, 2005 11:35:16 AM
To: [REDACTED]@allsettled.com; [REDACTED] Lenore Saracino
Subject: [REDACTED]

the new number is 15

Neal Jacobs
Director, Financial Underwriting
Coventry First
7111 Valley Green Road
Fort Washington, PA 19034
TEL [REDACTED]
FAX [REDACTED]
[REDACTED]@coventryfirst.com
www.coventryfirst.com

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[REDACTED]

From: Neal Jacobs
Sent: Friday, April 22, 2005 12:01:24 PM
To: [REDACTED], Lenore Saracino
Subject: [REDACTED]

number is 3

Neal Jacobs
Vice President, Financial Underwriting
Coventry First
7111 Valley Green Road
Fort Washington, PA 19034
TEL [REDACTED]
FAX [REDACTED]
[REDACTED]@coventryfirst.com
www.coventryfirst.com

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[REDACTED]

From: Neal Jacobs
Sent: Thursday, June 23, 2005 12:12:05 PM
To: Lenore Saracino
Subject: [REDACTED]

for [REDACTED] it is 20.

Neal Jacobs
Vice President, Financial Underwriting
Coventry First
7111 Valley Green Road
Fort Washington, PA 19034
TEL [REDACTED]
FAX [REDACTED]
[REDACTED]@coventryfirst.com
www.coventryfirst.com

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[REDACTED]

mailbox:///C:/Documents%20and%20Settings/Saracino/Application...

Sent: Friday, March 12, 2004 10:05 AM

Subject: [REDACTED]

My apologies. We have some internal miscommunication. The number on [REDACTED] is 10.

Neal Jacobs
Director, Financial Underwriting
Coventry First
7111 Valley Green Road
Fort Washington, PA 19034
TEL [REDACTED]
FAX [REDACTED]
[REDACTED]@coventryfirst.com
www.coventryfirst.com

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mailbox:///C:/Documents%20and%20Settings/Saracino/Application...

Subject: Fw: wj
From: "Michael Krasnerman" <[REDACTED]@allsettled.com>
Date: Wed, 14 Apr 2004 15:58:35 -0400
To: "Lenore Saracino" <[REDACTED]@allsettled.com>
X-UIDL: 257
X-Mozilla-Status: 0001
X-Mozilla-Status2: 00000000
Return-Path: <[REDACTED]@allsettled.com>
Received: from [66.163.205.65] (HELO smtp-auth1.radiant.net) by mx2.radiant.net (CommuniGate Pro SMTP 4.1.8) with SMTP id 47676652 for [REDACTED]@allsettled.com; Wed, 14 Apr 2004 12:34:21 -0700
Received: (qmail 23498 invoked from network); 14 Apr 2004 19:27:20 -0000
Received: from h-69-3-141-98.nycmny83.covad.net (HELO wks4) (69.3.141.98) by smtp-auth1.radiant.net with SMTP; 14 Apr 2004 19:27:20 -0000
Message-ID: <006801c4225a\$df0ac250\$0300a8c0@wks4>
Organization: Allsettled Group, Inc.
MIME-Version: 1.0
Content-Type: multipart/alternative; boundary="====_NextPart_000_0065_01C42239.57952950"
X-Priority: 3
X-MSMail-Priority: Normal
X-Mailer: Microsoft Outlook Express 6.00.2800.1158
X-MimeOLE: Produced By Microsoft MimeOLE V6.00.2800.1165

----- Original Message -----

From: [REDACTED]@coventryfirst.com
To: [REDACTED]@allsettled.com ; [REDACTED]@allsettled.com
Sent: Wednesday, April 14, 2004 3:22 PM
Subject: [REDACTED]

as discussed, the number for [REDACTED] is 2.

Neal Jacobs
Director, Financial Underwriting
Coventry First
7111 Valley Green Road
Fort Washington, PA 19034
TEL [REDACTED]
FAX [REDACTED]
[REDACTED]@coventryfirst.com
www.coventryfirst.com

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AS 004113

mailbox:///C:/Documents%20and%20Settings/Saracino/Applicatio...

Subject: Fw: [REDACTED]
From: "[REDACTED]" <[REDACTED]@allsettled.com>
Date: Thu, 22 Apr 2004 08:53:51 -0400
To: "lenore saracino" <[REDACTED]@allsettled.com>
X-UIDL: 484
X-Mozilla-Status: 0001
X-Mozilla-Status2: 00000000
Return-Path: [REDACTED]@allsettled.com>
Received: from [66.163.205.65] (HELO smtp-auth1.radiant.net) by mx2.radiant.net (CommuniGate Pro SMTP 4.1.8) with SMTP id 49916277 for [REDACTED]@allsettled.com; Thu, 22 Apr 2004 05:52:19 -0700
Received: (qmail 14989 invoked from network); 22 Apr 2004 12:45:13 -0000
Received: from h-69-3-141-98.nycmny83.covad.net (HELO WKS6) (69.3.141.98) by smtp-auth1.radiant.net with SMTP; 22 Apr 2004 12:45:13 -0000
Message-ID: <002e01c42868\$dd030910\$0900a8c0@WKS6>
MIME-Version: 1.0
Content-Type: multipart/alternative; boundary="====_NextPart_000_002B_01C42847.555FFE80"
X-Priority: 3
X-MSMail-Priority: Normal
X-Mailer: Microsoft Outlook Express 6.00.2800.1158
X-MIMEOLE: Produced By Microsoft MimeOLE V6.00.2800.1165

THIS IS FOR [REDACTED]

----- Original Message -----

From: [REDACTED]@coventryfirst.com
To: [REDACTED]@allsettled.com ; [REDACTED]@allsettled.com
Sent: Wednesday, April 21, 2004 5:50 PM
Subject: [REDACTED]

the number for [REDACTED] is 10

Neal Jacobs
Director, Financial Underwriting
Coventry First
7111 Valley Green Road
Fort Washington, PA 19034
TEL [REDACTED]
FAX [REDACTED]
[REDACTED]@coventryfirst.com
www.coventryfirst.com

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mailbox:///C:/Documents%20and%20Settings/Saracino/Applicatio...

Subject: Fw: [REDACTED]
From: "[REDACTED]" <[REDACTED]@allsettled.com>
Date: Wed, 16 Jun 2004 13:57:46 -0500
To: "lenore saracino" <[REDACTED]@allsettled.com>
X-UIDL: 1837
X-Mozilla-Status: 0001
X-Mozilla-Status2: 00000000
Return-Path: <[REDACTED]@allsettled.com>
Received: from [66.163.205.65] (HELO smtp-auth1.radiant.net) by mx2.radiant.net (CommuniGate Pro SMTP 4.1.8) with SMTP id 65689838 for [REDACTED]@allsettled.com; Wed, 16 Jun 2004 10:54:16 -0700
Received: (qmail 7374 invoked from network); 16 Jun 2004 17:47:26 -0000
Received: from h-69-3-141-98.nycmny83.covad.net (HELO WKS6) (69.3.141.98) by smtp-auth1.radiant.net with SMTP; 16 Jun 2004 17:47:26 -0000
Message-ID: <012601c453d3\$d160e690\$0900a8c0@WKS6>
MIME-Version: 1.0
Content-Type: multipart/alternative; boundary="====_NextPart_000_0121_01C453A9.E727A510"
X-Priority: 3
X-MSMail-Priority: Normal
X-Mailer: Microsoft Outlook Express 6.00.2800.1409
X-MimeOLE: Produced By Microsoft MimeOLE V6.00.2800.1409

----- Original Message -----

From: [REDACTED]@coventryfirst.com
To: [REDACTED]@allsettled.com ; [REDACTED]@allsettled.com
Sent: Wednesday, June 16, 2004 12:54 PM
Subject: [REDACTED]

the amount for [REDACTED] is ½ point.

Neal Jacobs
Director, Financial Underwriting
Coventry First
7111 Valley Green Road
Fort Washington, PA 19034
TEL [REDACTED]
FAX [REDACTED]
[REDACTED]@coventryfirst.com
www.coventryfirst.com

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AS 038854

Lenore Saracino

From: [REDACTED] <[REDACTED]@allsettled.com>
To: "lenore saracino" <[REDACTED]@allsettled.com>
Sent: Tuesday, September 14, 2004 6:34 PM
Subject: Fw: [REDACTED]

----- Original Message -----

From: [REDACTED]@coventryfirst.com
To: [REDACTED]@allsettled.com ; [REDACTED]@allsettled.com
Sent: Tuesday, September 14, 2004 6:10 PM
Subject: [REDACTED]

for [REDACTED] assuming final result is 15, the number is 20

Neal Jacobs
Director, Financial Underwriting
Coventry First
7111 Valley Green Road
Fort Washington, PA 19034
TEL [REDACTED]
FAX [REDACTED]
[REDACTED]@coventryfirst.com
www.coventryfirst.com

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